

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

ENBRIDGE ENERGY, LIMITED  
PARTNERSHIP, et al.,

Plaintiffs,

Case No. 1:20-cv-1141

v

HON. JANET T. NEFF

GRETCHEN WHITMER, et al.,

Defendants.

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STATE OF MICHIGAN, et al.,

Plaintiffs,

Case No. 1:20-cv-1142

v

HON. JANET T. NEFF

ENBRIDGE ENERGY, LIMITED  
PARTNERSHIP, et al.,

Defendants.

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**STATE PARTIES' RESPONSE TO FACILITATIVE MEDIATION  
REPORT DATED SEPTEMBER 14, 2021**

Defendants Gretchen Whitmer, et al. in Case No. 1:20-cv-1141 and Plaintiffs State of Michigan, et al. in Case No. 1:20-cv-1142 (collectively State Parties), by their undersigned counsel submit this Response to the Report Following Voluntary Facilitative Mediation Session filed by the mediator on September 14, 2021 (Case No. 1:20-cv-1141, ECF No. 34) ("Report"). The Report asserts that following the last scheduled mediation session on September 9, 2021, the status of the mediation is

“continuing-status of mediation and date to be determined.” (Case No. 1:20-cv-1141, ECF No. 34, PageID.228.)

As set forth in the very recently filed State Parties’ Motion to Enforce Notice of Appointment of Facilitative Mediator (Case No. 1:20-cv-1141, ECF No. 31, PageID.215–221; Case No. 1:20-cv-1142, ECF No. 62, PageID.928–934)(“Motion”),<sup>1</sup> the last scheduled mediation session on September 9th (the last of four sessions over the past five months) concluded without a settlement. (Case No. 1:20-cv-1141, ECF No. 31, PageID.218; Case No. 1:20-cv-1142, ECF No. 62, PageID.931.) As further set forth in that Motion, the State Parties have not consented to the continuation of the mediation process (Motion ¶8). Indeed, at the conclusion of the September 9th session the State Parties unambiguously communicated to the mediator that any further continuation of the mediation process would be unproductive for them, and they have no “desire to continue with the mediation process,” as contemplated by art VI.J.3 of the VFM Program Description. *See also* VFM Program Description Part VI.F (“The parties are free to continue with the process as long as they feel it is productive.”)

Under these circumstances, any insistence by the mediator that the mediation continue over the objection of the State Parties, and despite their clear lack of consent, would be improper and fundamentally at odds with the principle of *voluntary* facilitative mediation embodied in the Notice of Appointment of

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<sup>1</sup> This Motion is currently pending, and the State Parties continue to seek the relief requested therein.

Facilitative Mediator and the VFM Program Description adopted by the Court.

(*See, e.g.*, Notice at 1: “The mediator shall encourage and assist the parties in reaching settlement of their dispute but will not compel or coerce the parties to enter a settlement agreement.”)

Accordingly, for these reasons and the reasons stated in the State Parties’ Motion, the voluntary facilitative mediation process should be treated by the Court as completed without a settlement.

Respectfully submitted,

Dana Nessel  
Attorney General

/s/ Robert P. Reichel

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Dated: September 15, 2021

### **CERTIFICATE OF SERVICE**

I hereby certify that on September 15, 2021, I electronically filed the above document with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record. A copy of the above document was also served via first-class mail on the Hon. Gerald E. Rosen (retired) by mailing to: JAMS, 150 West Jefferson St., Suite 150, Detroit, MI 48226 and by email to: [grosen@jamsadr.com](mailto:grosen@jamsadr.com).

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Dated: September 15, 2021

LF: Enbridge Straits (Dec & Inj Relief)(GOV)(DNR)WD/AG# 2020-0304222-B-L/Response to Mediator's Report 2021-09-15